

TENNESSEE ADR NEWS

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ADR Commission Supports Proposed Parenting Plan

By: W. Emmett Marston, Chair

Legislation is being proposed in the Tennessee Legislature for a Parenting Plan for divorcing parents. Bill HR 1512 is sponsored by Bob Patton (R-Johnson City) in the House and Senate Bill 1885 is sponsored by Thelma Harper (D-Nashville) in the Senate. In the House the legislation was recommended for consideration by Representative Carol Chumney (D-Memphis), Chair of the House Children and Family Affairs Committee. The ADR Commission at its last meeting reviewed the proposed legislation and the previous report by the Administrative Office to the Legislature on the Parenting Plan Pilot Project.

The Parenting Plan Pilot Project has been in existence for the past eighteen months in six Tennessee Judicial Districts. The research and discussion by the Commission has led it to conclude that the uniform adoption of House Bill 1512/Senate Bill 1885 would improve the administration of justice and the uniform system of court-annexed dispute resolution in Tennessee. The Commission has taken the position of recommending to the Legislature the passage of the Bill.

Parenting education is at the core of the new law. Divorcing parents are required to attend a minimum of four hour parenting seminar within thirty days of filing a divorce petition.

This pilot program contains several components: Parent education, a detailed parenting plan, turning to mediation if the
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Mediation: To Order It Or Not To Order It; That Is The Question.

By: Robert S. Brandt

Tennessee's judges have since 1996 been authorized by Rule 31 to order parties to mediation. When should a judge use this authority in civil cases?

Attitudes among Tennessee's judges range from one extreme to the other, from *"it's useless to order mediation unless all parties agree to it"* to *"order mediation in every case."* My 21-years as a trial judge followed by private mediation practice gives me a unique perspective on the question.

The experience of countless judges and mediators does not support the conclusion that everyone must agree to mediation for it to work. Nearly every case settles at or after the mediation, and I haven't found any difference between court-ordered and purely voluntary mediation in that regard. And ordering mediation in every case seems like an overkill that might create more expense and delay.

Instead of the two extremes, careful, reasoned case-by-case decisions seem to be the best course. Here are some factors to consider.

Multiple Parties. Gathering everyone together to talk settlement when there are more than two or three parties is not easy, and simply ordering them to mediate is often all it takes to get the lawyers and parties together and get the case settled.

Expenses. Lawsuits take on lives of their own where costs frequently outweigh potential benefits. The judge is doing the parties a big favor by putting them in a process that will enable them to see the
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**Tennessee Alternative Dispute
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Tennessee Descends on Boston

by Ann Barker, Director

From April 29 through May1 Boston had to feel the effects of Tennessee-style mediation when seven members of the ADR Commission along with mediators Carol Berz, Bob Brandt, Pat Vital and Wright Tisdale attended the first annual meeting of the ABA Dispute Resolution Section. The meeting proved to be comprehensive, instructive and at times, inspirational.

Sessions on ethics for mediators and for advocates, best practices for family mediators, diversity concerns in mediation, proposed revisions to the Uniform Arbitration Act, peer mediation, defining the role of judges in ADR, and state regulation of ethics and professional responsibility in court-connected ADR programs gave the ADR Commission members plenty of food for thought. (Not to mention all the calorie-laden food we enjoyed.)

The opening panel on Innovative Ideas for Dispute Resolution was lead by Harvard Professors Frank Sander, Robert Mnookin, Roger Fisher, and Sheila Heen. This proved to be a provocative discussion of where we have been and where we are going in dispute resolution. When asked what one change the panelists would make for the future of dispute resolution they responded: "Get away from dispute resolution language and talk about problem solving; stop being stylized." "Be agents of change so people can think more clearly and skillfully about their problems." "Be open to learning, to changing ideas." "Change our society so that our media and culture no longer celebrate conflict and begin to celebrate problem solving."

During its upcoming meetings the ADR Commission will consider many of the new ideas it received at the conference.



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parties are unable to agree on a parenting plan during the divorce and attempting to solve post-divorce matters through mediation before going to court. The proposed law is designed to benefit families by reducing time, monetary and emotional expenditures in divorce and post-divorce litigation. If it does pass, it will become effective statewide on January 1, 2000.

W. Emmett Marston is a founding partner of Martin, Tate, Morrow & Marston, P.C., in Memphis. He is the former chair of the Tennessee Commission on CLE & Specialization and is a member of the ABA House of Delegates.

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futility of their efforts.

Hostile Lawyers. Sending them to mediation puts the lawyers in an environment conducive to civil discourse. And, perhaps more importantly, it brings together the clients who will often find solutions in spite of the lawyers.

Complex Issues. Some issues are so convoluted that the judge wonders how anyone will ever present them to a trier of fact. These cases are perfect for mediation, for the people who profess to understand the complex issues can talk among themselves and reach their own solutions.

Destruction of Mutually Beneficial Relationship. Most disputes that arise out of continuing relationship start with a misunderstanding. As the dispute escalates, the parties ruin chances to return to a mutually beneficial relationship. Mediation lets them clear up the misunderstanding and return to a mutually beneficial relationship, something not available to them in court.

Instinct. Judges develop a sense of when a case can be or should be settled. Follow that instinct.

Mediation is cheap compared to litigation. By carefully and selectively ordering it, judges can reduce expenses, let the parties develop their own solution, and free judicial time for disputes that can only be resolved in court.

Robert S. Brandt is former president of the Tennessee Judicial Conference and now in practice with the Nashville firm of Doramus, Trauger & Ney.



Church Mediation Training Offered

“Transforming Conflict in Congregations: Pathways and Tools” is a one and one-half day training on mediation in religious settings. While repudiating violence and forceful resolution of conflict, religious leaders and organizations often have a limited repertoire of less forceful ways to transform conflicts into more harmonious relations befitting a religious community. As a result, church members and leaders react much like the rest of society, often finding themselves caught up in disagreements, political struggles, and even personal feuds, which they try to settle by legislation, authoritative decree, social pressure, vindictive judgments, or litigation. The training will focus on the application of mediation techniques to resolve conflicts which hinder congregations from achieving their spiritual and religious goals.

The training will present basic mediation principles applicable to religious settings. It will be held at Boones Creek United Methodist Church near Johnson City, Tennessee, on May 21 (7:00-9:30 p.m.) And May 22 (9:00-4:30 p.m.). The cost of the training is \$35.00. CME credit is pending from the Mediation Association of Tennessee.

For more information contact:
Holston Conference Conciliation Service
Carter Pate, Chair
Phone: 423-892-7650
E-mail: bcpdep@mindspring.com

Victim Offender Reconciliation

Program

Legislative Report

By: Tennessee Community Mediation and VORP Coalition

In January the Tennessee Community Mediation and VORP Coalition drafted legislation to amend the Victim-Offender Mediation Act of 1993. The legislation would (1) for new programs waive the 50% local funding match required to receive state funds for up to three years and (2) allow counties to assess \$1.00 per case in juvenile and general sessions courts to fund existing or start new mediation programs.

The legislation was sponsored by Senator Pete Springer (SB 1447) and Representatives Brown, DeBerry, Hargrove, Windle, Brown and Pruitt (HB 1055). It has been endorsed by the TCJFCJ Legislative Committee on behalf of the TN Council of Juvenile and Family Court Judges.

Following are some VORP program statistics for July 1995 - June 1998.

3,597 Cases referrals processed (1,447 juvenile cases, 2,150 adult cases)
 1,502 Mediations held (participation is voluntary)
 1,398 Contracts resulting from mediations (93% of mediations resulted in contracts)
 994 Indirect Contracts reached (no face to face meeting/mediation held)
 91-94% of contracts reached are successfully fulfilled
 5,675 - 6,356 People were served (each case involved 2-4 participants)
 750 Volunteers were trained
 7,515 Volunteer hours (averaged from a range of 3-7 volunteer hours/case)

VORP provides a fast, confidential, non-adversarial, cost effective, and successful means for participants to

peacefully resolve disputes through the assistance of trained volunteer mediators. VORP promotes peaceful conflict resolution and financial savings to the communities. VORP also provides voice for victims, accountability for offenders, contract and restitution fulfillment, and participant satisfaction.

Those who have been involved with VORP are very pleased with the service it provides. A victim from Cumberland County recently stated, "He never thought about the feelings of someone whose home was robbed. He never understood my side of the fence (before). He apologized...talking together did a lot for both of us."

An adolescent victim's parent from Putnam County was greatly relieved by the VORP referral. "I was so glad to find out about mediation. This situation doesn't need to be in court. We care about her (offender) and miss seeing her. Thank you for helping them resolve this."

District Attorney William E. Gipson, of the Upper Cumberland area says, "This is a valuable service to the community. It provides an important service to the victims of crime who are most often overlooked."

Juvenile & General Sessions Court Judge Billy Townsend of Lewis County is emphatic. "I support mediation and VORP and would like to see it expanded. A very basic element of justice is making up for the wrong you've done."

U.S. Department of Navy **Principles of Conflict Resolution**

In 1998, the U.S. Department of Navy created an Office of Conflict Resolution. It recently published the following list of principles to governing conflict resolution.

1. **Think Before Reacting**

The tendency in a conflict situation is to react immediately. After all, if we do not react we may lose our opportunity. In order to resolve conflict successfully it is important to think before we react – consider the options, weight the possibilities. The same reaction is not appropriate for every conflict.

2. **Listen Actively**

Listening is the most important part of communication. If we do not hear what the other parties are communicating we can not resolve a conflict. Active listening means not only listening to what another person is saying with words, but also to what is said by intonation and body language. The active listening process also involves letting the speaker know that he or she has been heard, For example, “What I heard you say is...”

3. **Assure a Fair Process**

The process for resolving a conflict is often as critical as the conflict itself. It is important to assure that the resolution method chosen as well as the process for affecting that method is fair to all parties to the conflict. Even the perception of unfairness can destroy the resolution.

4. **Attack the Problem**

Conflict is very emotional. When emotions are high it is much easier to begin attacking the person on the other side than it is to solve the problem. The only way conflicts get resolved is when we attack the problem and not each other. What is the problem that lies behind the emotion? What are the causes instead of the symptoms?

5. **Accept Responsibility**

Every conflict has many sides and there is enough responsibility for everyone. Attempting to place blame only creates resentment and anger that heightens any existing conflict. In order to resolve a conflict we must accept our share of the responsibility and eliminate the concept of blame.

6. **Use Direct Communication**

Say what we mean and mean what we say. Avoid hiding the ball by talking around the problem. The best way to accomplish this is to use “I-Messages”. With an “I-Message” we express our own wants, needs or concerns to the listener. “I-Messages” are clear and non-threatening way of telling others what we want and how we feel. A “you-message” blames or criticizes the listener. It suggests that she or he is at fault.

7. **Look for Interests**

Positions are usually easy to understand because we are taught to verbalize what we want. However, if we are going to resolve conflict successfully we must uncover why we want something and what is really important about the issue in conflict. Remember to look for the true interests of all the parties to the conflict.

8. **Focus on the Future**

In order to understand the conflict, it is important to understand the dynamics of the relationship including the history of the relationship. However, in order to resolve the conflict we must focus on the future. What do we want to do differently tomorrow?

9. **Options for Mutual Gain**

Look for ways to assure that we are all better off tomorrow than we are today. Our gain at the expense of someone else only prolongs conflict and prevents resolution.

This list can be found on the web at www.ogc.secnaveq.hq.navy.mil/ogcwww/principles.html.



Now that our ex-customers hate us, we've all been through chapter 13, 11, & 7; are all under indictment, and the lawyers have our money, I'm beginning to think we should consider mediation.

Ethics Corner

Rule 31 mediator and attorney Vance Cheek, Jr. of Johnson City recently relayed this ethical dilemma. He was referred a case by the court to mediate a situation where the close friend of an elderly, incompetent woman had power of attorney to handle the elderly woman's financial affairs. The woman owned some land that was the center of the dispute and it was agreed to be sold as part of the settlement. The attorneys for the buyer and for the land owner agreed upon the details of the sale. However, the close friend who had power of attorney objected to the sale.

The mediation reached impass. Counsel for the parties wanted the mediator to report the cause of the impass to the court. Mr. Cheek felt that this would breach the confidentiality of the mediation and instead advised counsel to take the situation to the court for resolution. The court appointed a guardian-ad-litem for the elderly land owner. The GAL determined that the land owner needed to sell the land in order to pay for his expenses and care and recommended this to the court.



If you have ethical questions that arise during mediation, please let us know. It helps us all to think about the issues.

Currently Approved Rule 31 Mediation Trainings for 1999 - 2000

Chattanooga

**GENERAL CIVIL MEDIATION TRAINING
(40 HOURS REQUIRED)**

November 10 - 14, 1999

Resolute Systems, Inc.
Phone: (800) 745-2402

**FAMILY MEDIATION TRAINING (46
HOURS REQUIRED)**

June 11 - 13 & 18 - 20, 1999

Communication Solutions
Phone: (800) 586-2295

Knoxville

**GENERAL CIVIL MEDIATION TRAINING
(40 HOURS REQUIRED)**

August 17 - 21, 1999

Resolute Systems, Inc.
Phone: (800) 745-2402

October 20 - 24, 1999

Communication Solutions
Phone: (800) 586-2295

**FAMILY MEDIATION TRAINING (46
HOURS REQUIRED)**

May 14 - 16 & 21 - 23, 1999

Communication Solutions
Phone: (800) 586-2295

August 13 - 15 & 20 - 21, 1999

Agreements Unlimited
Phone: (540) 783-7015

Memphis

**GENERAL CIVIL MEDIATION TRAINING
(40 HOURS REQUIRED)**

September 22 - 26, 1999

Communication Solutions
Phone: (800) 586-2295

October 19 - 23, 1999

Resolute Systems, Inc.
Phone: (800) 745-2402

**FAMILY MEDIATION TRAINING (46
HOURS REQUIRED)**

May 19 - 23, 1999

Mediation and Conflict Management
Services

Phone: (314) 721-4333

June 10 - 14, 1999

Agreements Unlimited
Phone: (540) 783-7015

June 24 - 28, 1999

Atlanta Divorce Mediators
Phone: (800) 862-1425

November 3 - 7, 1999

Mediation & Conflict Management
Services

Phone: (314) 721-4333

Nashville

**GENERAL CIVIL MEDIATION TRAINING
(40 HOURS REQUIRED)**

June 1 - 5, 1999

Resolute Systems, Inc.
Phone: (800) 745-2402

November 10 - 14, 1999

Communication Solutions
Phone: (800) 586-2295

**FAMILY MEDIATION TRAINING (46
HOURS REQUIRED)**

July 16 - 18 & 23 - 25, 1999

Communication Solutions
Phone: (800) 586-2295

August 5 - 10, 1999

Atlanta Divorce Mediators
Phone: (800) 862-1425

November 11 - 13 & 19 - 20, 1999

Agreements Unlimited
Phone: (540) 783-7015

May 9 - 13, 2000

Agreements Unlimited
Phone: (540) 783-7015

Tri-Cities Area

**FAMILY MEDIATION TRAINING (46
HOURS REQUIRED)**

February 17 - 19 & 25 - 26, 2000

Agreements Unlimited
Phone: (540) 783-7015

MEDIATION CLE/CME COURSES AVAILABLE

These trainings will meet the continuing education requirements of Rule 31

CHATTANOOGA

ADVANCED ADR TRAINING (6 HOURS)

November 5, 1999

Sponsored by the Chattanooga Bar Association and the Federal Bar Association

Phone: (423) 756-3222

NASHVILLE

THIRD ANNUAL DISPUTE RESOLUTION FORUM (6 HOURS)

May 6, 1999

Sponsored by the Tennessee Bar Association

Phone: (800) 899-6993

This list of approved trainings is constantly being updated. The quickest way to access the information is through the internet. A current list of approved mediation trainings can be found on the Tennessee Supreme Court web page at www.tsc.state.tn.us and also on the Tennessee Bar Association web site at www.tba.org. All CLE approved trainings can be found at www.cle tn.com. Search under "mediation".

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